

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CSX TRANSPORTATION, INC.,)
individually and on behalf of NORFOLK)
& PORTSMOUTH BELT LINE)
RAILROAD COMPANY,)

Plaintiff,)

v.)

Case No. 2:18-cv-530-MSD-RJK

NORFOLK SOUTHERN RAILWAY)
COMPANY, et al.,)

Defendants.)

**NOTICE OF FILING AMENDED TRIAL EXHIBIT LISTS AND
IDENTIFICATION OF RIPE OBJECTIONS TO TRIAL EXHIBITS**

Plaintiff CSX Transportation, Inc. (“CSX”) and Defendants Norfolk Southern Railway Company (“NS”) and Norfolk and Portsmouth Beltline Railway Company (“NPBL” or the “Belt Line”), by counsel, hereby submit amended trial exhibit lists and identify a list of exhibits with objections that the parties believe are ripe for review by the Court at the continued Pretrial Conference scheduled for December 20, 2022.

Per the Court’s instruction, since the Pretrial Conference on December 6, 2022, the parties have worked together to identify and narrow the parties’ respective lists of trial exhibits and the objections thereto, specifically identifying objections that are ripe for this Court’s review. To that end, the parties have narrowed the issues as follows:

I. Amended Exhibit Lists

The parties have worked to narrow their respective exhibits lists. A revised Joint Exhibit List is attached as **Exhibit A**. CSX’s Amended Exhibit List is attached as **Exhibit B**. NS’s

Amended Exhibit List is attached as **Exhibit C**. NPBL's Amended Exhibit List is attached as **Exhibit D**.

II. Objections Controlled by Motion in Limine Decisions

The parties agree that NS's objections to CSX's trial exhibits that are based on arguments made by NS in its Motions in Limine regarding the Reasonable Rate [ECF No. 329] and the Diamond Track [ECF No. 343], are controlled by the Court's ruling on these Motions in Limine.¹ ECF No. 521.

NS objections based on NS's Motion in Limine regarding the Diamond Track (ECF No. 343) relate to the following CSX exhibits:

P029	P215	P439
P123	P220	P440
P177	P293	P441
P208	P438	P446

NS objections based on NS's Motions in Limine regarding the Reasonable Rate (ECF No. 329) relate to the following CSX exhibits:

P029	P141	P419
P030	P217	P420
P033	P223	P421
P047	P225	P422
P056	P273	P445
P066	P280	P466
P100	P300	P470
P109	P333	P480
P129	P374	P484
P130	P390	P528
P134	P393	P531
P137	P406	P532
P138	P418	P568

¹ The objections based on NS's Motion in Limine regarding Lost Customer Contracts (ECF No. 331) are not included here because the Court's ruling was without prejudice and indicated that it would be necessary to review the individual documents at issue. Accordingly, the Court's ruling did not resolve NS's objections related to the arguments made in its Motion in Limine regarding Lost Customer Contracts.

NS objects to the Court's denial of its Motions in Limine regarding the Reasonable Rate (ECF No. 329) and the Diamond Track (ECF No. 343). NS anticipates filing formal objections to these denials under Federal Rule of Civil Procedure 72(a) on December 16, 2022.

Accordingly, until NS's forthcoming objections to the denial of its Motions in Limine regarding the Reasonable Rate (ECF No. 329) and the Diamond Track (ECF No. 343) have been adjudicated, the parties agree that NS's objections to CSX's trial exhibits that are based on arguments made by NS in its Motions in Limine regarding the Reasonable Rate (ECF No. 329) and the Diamond Track (ECF No. 343) are preserved pending the outcome of NS's objection to the Motion in Limine decisions.

III. Identification of Ripe Objections

The parties have worked to identify a list of objections that are not controlled by the Court's prior rulings, or are not otherwise reserved as described below, and are, therefore, ripe for this Court to rule upon. To this end:

- The parties agree to waive cumulative objections under Federal Rule of Evidence 403 as to exact duplicates of a document already introduced into evidence.
- Unless otherwise specifically raised, the parties agree to reserve all objections as to hearsay and foundation to be decided at trial.
- The parties agree that all objections related to pending motions are reserved to be decided after the pending motion has been decided. These include objections based on arguments made in Defendants' Motions for Summary Judgment, such as objections based on the statute of limitations, arguments made in Defendants' Daubert motions, arguments made in NS's Motion in Limine regarding CSX's use of internal NS emails,

and arguments related to NS's objections to the denial of its Motion in Limine related to the Reasonable Rate and Diamond Track.

Based on these limitations, the parties have identified a significantly narrowed list of objections that are ripe for the Court's review. A chart of these objections is attached as **Exhibit E**.

Dated: December 15, 2022

Respectfully submitted,

CSX TRANSPORTATION, INC.

By Counsel

/s/ Jeanne E. Noonan

Robert W. McFarland (VSB No. 24021)
Benjamin L. Hatch (VSB No. 70116)
V. Kathleen Dougherty (VSB No. 77294)
Jeanne E. Noonan (VSB No. 87863)
MCGUIREWOODS LLP
World Trade Center
101 West Main Street, Suite 9000
Norfolk, Virginia 23510-1655
Telephone: (757) 640-3716
Facsimile: (757) 640-3930
E-mail: rmcfarland@mcguirewoods.com
E-mail: bhatch@mcguirewoods.com
E-mail: vkdougherty@mcguirewoods.com
E-mail: jnoonan@mcguirewoods.com

J. Brent Justus (VSB No. 45525)
Ashley P. Peterson (VSB No. 87904)
W. Cole Geddy (VSB No. 93511)
MCGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219-3916
Telephone: (804) 775-1000
Facsimile: (804) 698-2026
E-mail: bjustus@mcguirewoods.com

E-mail: apeterson@mcguirewoods.com
E-mail: cgeddy@mcguirewoods.com

NORFOLK SOUTHERN RAILWAY COMPANY

By Counsel

/s/

Alan D. Wingfield (VSB No. 27489)
Michael E. Lacy (VSB No. 48477)
TROUTMAN PEPPER HAMILTON SANDERS LLP
1001 Haxall Point
Richmond, Virginia 23219
Tel. (804) 697-1200
Fax (804) 698-6061
alan.wingfield@troutman.com
michael.lacy@troutman.com

Tara L. Reinhart (*admitted pro hac vice*)
Thomas R. Gentry (*admitted pro hac vice*)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM
LLP
1440 New York Ave, N.W.
Washington, D.C. 20005
Tel (202) 371-7000
tara.reinhart@skadden.com
thomas.gentry@skadden.com

John C. Lynch (VSB No. 39267)
Kathleen M. Knudsen (VSB No. 90845)
TROUTMAN PEPPER HAMILTON SANDERS LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, Virginia 23462
Tel. (757) 687-7500
Fax (757) 687-7510
john.lynch@troutman.com
kathleen.knudsen@troutman.com

Monica McCarroll (VSB No. 45622)
REDGRAVE LLP
14555 Avion Parkway, Suite 275
Chantilly, VA 20151
Tel. (703) 592-1155
Fax (703) 230-9859
mmccarroll@redgravellp.com

Counsel for Defendant
Norfolk Southern Railway Company

NORFOLK AND PORTSMOUTH BELTLINE RAILWAY COMPANY

By Counsel

/s/

James L. Chapman IV (VSB No. 21983)
W. Ryan Snow (VSB No. 47423)
Alexander R. McDaniel (VSB No. 92398)
CRENSHAW, WARE & MARTIN, P.L.C.
150 West Main Street, Suite 1923
Norfolk, Virginia 23510
Tel. (757) 623-3000
Fax (757) 623-5735
jchapman@cwm-law.com
wrsnow@cwm-law.com
amcdaniel@cwm-law.com

Counsel for Defendant Norfolk & Portsmouth Beltline Railroad Company